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16 UNITED STATES OF AMERICA

17 UNITED STATES DISTRICT COURT

18 FOR THE CENTRAL DISTRICT OF CALIFORNIA

19 UNITED STATES OF AMERICA,

20 No. CR 12-1014-ABC

21 Plaintiff,

22 GOVERNMENT'S POSITION SUPPORTING
23 REVOCATION OF BOND; EXHIBITS

24 v.

25 JOHN WINSTON BOONE,
26 aka "John Smith,"
27 aka "Justin Winabali,"
28 aka "John Greene,"
29 aka "John King,"
30 dba "HS Consortium, Inc.,"
31 dba "American Blog, Inc.,"
32 dba "Great Ideas, LLC,"

33 Defendant.

34 HEARING DATE: 7-8-13
35 HEARING TIME: 1:30 p.m.
36 Location: Courtroom of the
37 Hon. Audrey B.
38 Collins

39 Plaintiff United States of America, by and through its counsel
40 of record, the United States Attorney for the Central District of
41 California and Assistant United States Attorney Lisa E. Feldman,
42 hereby files its brief in support of revocation of bond.

43 This brief is based upon the attached memorandum of points and
44 authorities, the attached exhibits¹, the files and records in this

45
46
47
48 ¹ As noted below, with the exception of Exhibits 5 and 9, all of
49 the attached exhibits are true and correct copies of documents that

1 case, and such further evidence and argument as the Court may
2 permit.

3 Dated: July 2, 2013

Respectfully submitted,

5 ANDRÉ BIROTTÉ JR.
United States Attorney

6 ROBERT E. DUGDALE
7 Assistant United States Attorney
Chief, Criminal Division

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9 LISA E. FELDMAN
Assistant United States Attorney

10 Attorneys for Plaintiff
11 UNITED STATES OF AMERICA

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25 have been previously bates-stamped and produced to defendant during
26 discovery in this federal case (Exhibits 2-4 and 6-8) or are
27 pleadings filed by the Court (Exhibit 1). Exhibits 5 and 9 are true
28 and correct copies of documents that were recently provided to the
government by the Santa Clara District Attorney's Office and have
not been previously produced in this case.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On October 16, 2012, an indictment was filed charging defendant with nine counts of wire fraud, in violation of 18 U.S.C. § 1343. The Indictment alleges that defendant engaged in an Internet fraud scheme in which he fraudulently sold website domain names and associated content to the victim-purchasers after providing the victim-purchasers with falsified financial records, including fabricated PayPal records, purportedly reflecting past advertising revenue generated by the websites for sale. The victims of the scheme either wire transferred the funds to accounts controlled by defendant, or paid defendant via cashier's check. Although the Indictment relates to two of the victims who reside in the Central District of California, the evidence shows that defendant's Internet fraud scheme involved a total of approximately 18 victims throughout the United States, and those victims sustained a combined total actual loss of approximately \$1.3 million.

On November 30, 2012, defendant, who lives in the Northern District of California, made his initial appearance in federal court in San Francisco, during which he was released on a \$100,000 appearance bond with various terms, including conditions that he be subject to electronic monitoring at the direction of Pretrial Services and that he shall not access the Internet. (A copy of this order is attached hereto as Exhibit 1).

On June 19, 2013, the Pretrial Services Office in Los Angeles filed a petition with the Court alleging violations of defendant's conditions of release and requesting an Order to Show Cause Hearing to determine if defendant should remain on bond. In her letter to

1 the Court, the Pretrial Services Officer advised that a state search
2 warrant was executed at defendant's residence on June 12, 2013,
3 which revealed that defendant had been using the Internet, and
4 further that defendant has repeatedly violated the rules of his
5 electronic monitoring. In light of these violations and the other
6 information set forth in the letter, the PSO has advised the
7 government that it is recommending that defendant's bond be revoked.
8

9 The government strongly concurs with the PSO's recommendation
10 to revoke defendant's bond for an additional significant reason:
11 before defendant was arrested and placed on federal supervision in
12 this case, but after the FBI executed its search warrant at
13 defendant's residence on July 20, 2010, in this case -- and thus,
14 while knowing he was under federal criminal investigation for wire
15 fraud -- defendant is alleged to have embezzled over \$78,000 from
16 his then employer, Ricoh and soon thereafter, after being fired from
17 Ricoh, he allegedly committed another fraud against a subsequent
18 employer, Casto Travel. Equally disturbing, the evidence shows that
19 while knowing he was also under investigation by state authorities
20 for the Ricoh embezzlement, defendant (through his attorney)
21 provided a district attorney's office investigator with a fabricated
22 email purportedly from his then Ricoh supervisor approving the
23 payments he allegedly embezzled. The Santa Clara D.A.'s Office has
24 charged defendant with felony grand theft for the Ricoh embezzlement
25 and also with preparing false documentary evidence for submitting
26 the fabricated email, and has informed the government that the
27 recent search warrant executed at defendant's residence was done in
28 connection with the Casto Travel fraud allegations.

1 Defendant's prior criminal history of fraud and perjury, his
2 alleged fraudulent conduct even after the FBI search warrant was
3 executed at his residence, and his repeated violations while on
4 federal pretrial release demonstrate defendant's arrogance, lack of
5 remorse, and shocking disregard for the criminal justice system.
6 For all these reasons, the government believes that defendant will
7 continue to violate the terms and conditions of pretrial release and
8 therefore respectfully requests that defendant's bond be revoked.
9

10 **II. ALTHOUGH PRIOR TO FEDERAL SUPERVISION, THE EVIDENCE SHOWS THAT
11 DEFENDANT COMMITTED MULTIPLE FRAUDS AFTER THE FEDERAL SEARCH
12 WARRANT WAS EXECUTED AT HIS RESIDENCE IN JULY 2010**

13 A. The FBI Search Warrant on July 20, 2010

14 On July 20, 2010, FBI agents executed a search warrant at
15 defendant's residence in Novato, California. (A copy of the search
16 warrant and inventory is attached hereto as Exhibit 2, BS 170-180¹).
17 The warrant cover page specifically authorizes a search by the
18 "Federal Bureau of Investigation" for "criminal violation(s) of
19 Title 18, United States Code, Section(s) 1343," and the first
20 paragraph of Attachment B specifically states that the statute
21 refers to wire fraud. (Ex. 2, BS 173). The attached "Description of
22 Items To Be Seized" also makes clear that the investigation related
23 to the fraudulent purchase and/or sale of Internet websites and that
24 defendant was the focus of the investigation.²

25

¹ "BS" refers to the bates-stamp number on the document,
26 indicating it was previously produced in discovery in this case.
27 The attached exhibits have been further redacted for this filing to
28 protect witness names and confidential identification information.

29

² For example, the second paragraph of Attachment B
30 specifically authorizes the seizure of "Items believed to be inside
31 the premises and curtilage, including the person of John Winston
32 Boone," which left no doubt that the investigation focused on
33 defendant. (Exhibit 2, BS 173). The Description of Items to be

1 Defendant was present and opened the door for the agents when
2 they arrived, and a copy of the search warrant and inventory listing
3 defendant's name was left on a table in the residence. (A copy of
4 the FBI report of the execution of the search warrant is attached
5 hereto Exhibit 3, BS 503-504).³

6 **B. Defendant's Alleged Embezzlement of \$78,295 from Employer**
7 **Ricoh from January 2011 Through July 2011**

8 According to investigative reports prepared by state agents in
9 the Rapid Enforcement Allied Computer Team ("REACT", a regional high
10 tech task force) (copies of which are attached hereto as Exhibits 4
11 and 6, BS 1062-1077), defendant subsequently committed the following
12 fraud against his then employer, Ricoh Innovations ("Ricoh"): In
13 2011, while employed as Ricoh's Manager of Information Technology,
14 defendant intercepted legitimate invoices from a company called
15 GoGrid, an outside firm that handled Ricoh's IT services, and
16 replaced them with forged invoices showing a much higher charge,
17 deposited monies paid by Ricoh for the forged invoices into
18 defendant's Bank of America account, paid the legitimate invoices
19 with his own credit card and retained the difference. (Ex. 4, BS
20 1062-1069).

21
22
23 Seized goes on to specify "the purchase and/or sale of any Internet
24 website between April 2005 to the present" (Item No. 5) and lists
25 defendant's aliases (Item No. 2), defendant's email addresses (Item
26 No. 3), Internet domain names defendant had offered for sale (Item
27 No. 4), websites defendant had used to advertise the sale of such
28 domain names (Item No. 6), and defendant's companies (Item No. 7).
(Id.)

27 ³ The warrant was filed under seal and thus, a copy of the
28 supporting affidavit was not provided to defendant at that time. (It
has since been produced to defendant in discovery.)

1 In reviewing documents obtained by Bank of America, Ricoh, and
2 GoGrid, the investigating task force agent determined that:

3

- 4 • Defendant had opened a Bank of America business checking
5 account as "Social Media, Inc.Org" doing business as
6 "GoGrid.Org"; two credit cards were associated with the
7 account, including a credit card ending in 2349.
- 8 • Between January 12, 2011 and July 12, 2011, GoGrid sent
9 to Ricoh legitimate invoices totaling \$16,487.77, showing
10 its true address. Given his role at Ricoh, these
11 invoices came to defendant's desk. Defendant paid these
12 invoices with his Visa card ending in 2349.
- 13 • Between January 12, 2011 and July 28, 2011, defendant
14 submitted forged invoices to Ricoh showing the GoGrid
15 name, but instead listing an address on Chestnut Street
16 in San Francisco that defendant controlled ("defendant's
17 Chestnut Street address"). Based on these invoices,
18 Ricoh (unwittingly) issued checks for these invoices
19 payable to GoGrid and reflecting defendant's Chestnut
20 Street address, totaling \$94,783.37, which were sent to
21 defendant's Chestnut Street address and deposited into
22 defendant's GoGrid.Org account at Bank of America.
- 23 • The difference between the two (i.e. what GoGrid actually
24 billed Ricoh and what Ricoh paid GoGrid through
25 defendant) is \$78,295.60 (the amount of defendant's
26 embezzlement).

27 (Ex. 4, BS 1066-1069, 1074).

28

29 C. On June 26, 2012, Defendant (Through his Attorney)
30 Provided Santa Clara D.A. Investigator with Fabricated
31 Email During Criminal Investigation of Ricoh Embezzlement

32 Defendant was terminated by Ricoh in August 2011 and evidence
33 shows that REACT task force agents began investigating the Ricoh
34 embezzlement in approximately November 2011. Defendant acknowledged
35 he took the money, but he claimed that he was operating a consulting
36 firm and that the difference in the amounts (\$78,285) was his
37 "consulting fee." (Ex. 4, BS 1063).

1 On November 4 and November 8, 2011, Task Force Agent ("TFA")
2 Nick Muyo left messages for defendant's attorney regarding the Ricoh
3 case. (Ex. 4, BS 1066). On November 22, 2011, TFA Muyo received a
4 return call from defendant's new attorney, and during the call, the
5 agent summarized the Ricoh criminal investigation and stated he
6 believed there was good documentary evidence of the crime. (Id.)
7

8 On January 31, 2012, defendant's attorney called TFA Muyo and
9 advised he had located a possible defense witness in the case. (Ex.
10 4, BS 1067). On March 16, 2012, the defense attorney called TFA
11 Muyo and provided the name and phone number of the witness, who the
12 agent thereafter interviewed (but who did not support defendant's
13 claim). (Ex. 4, BS 1068-69).

14 On June 26, 2012, defendant's attorney wrote a letter to Hung
15 Ledang, an Investigator at the Santa Clara District Attorney's
16 Office, stating that the payments were consulting fees to defendant
17 and that this subcontracting arrangement "was authorized by
18 individuals who were in the management of Ricoh at the time the
19 arrangements were made." (A copy of counsel's letter with
20 enclosures is attached hereto as Exhibit 5).⁴ Among other documents,
21 the letter enclosed a copy of an email, dated December 6, 2010, from
22 defendant's then-supervisor at Ricoh, purportedly approving the
23 consulting fee arrangement. The email, containing the Subject line
24 "GOGRID SUPPORT," stated:
25 //
26 //

27 ⁴ This document was recently obtained from the Santa Clara
28 District Attorney's Office and has not been previously produced in
this case.

1 John,

2 As agreed in the last DC selection meeting, we do not have
3 the resources in house to manage the entire cloud
4 infrastructure. As such, the Gogrid consulting option is
approved. We still need an option to manage the online
infrastructure 24/7.

5 Let's review your hiring plan during staff meeting next
6 week.

7 I will be traveling back to Asia for three weeks so let's
move quickly.

8 [first name redacted]

9 [first name redacted] Whitsett
10 Ricoh-EPT Director of Operations
11 2077 Gateway Place, Suite 200
12 San Jose, CA 95110
13 [phone number redacted]

14 (Ex. 5, DA BS 448; bold emphasis added)⁵.

15 However, as set forth in a supplemental investigative report,
16 task force agents later determined from interviews with Whitsett and
17 Ricoh IT staff that the email was fabricated and apparently cobbled
18 together from earlier emails Whitsett had sent defendant; indeed,
19 Whitsett was already in Asia on December 6, 2010. (A copy of the
supplemental report is attached hereto as Exhibit 6, BS 1075-1077).⁶

20

21 ⁵ This is the bates-stamp used by the DDA; this document was
recently obtained by the government and not previously produced.

22 ⁶ Whitsett stated that he did not give defendant permission to
23 be a consultant. Whitsett reviewed the email and said that although
24 the header was correct, at the time the email was allegedly sent to
Boone on December 6, 2010, Whitsett was already in Asia; he had left
on November 28, 2010 and did not return until December 9, 2010. (Ex.
25 6, BS 1076). In addition, Ricoh IT stated that all of Whitsett's
26 "sent emails" for seven months prior to January 2011 were deleted,
27 and that it did not find the email in either Whitsett's sent folder
or defendant's inbox, and the email was not in the server archives
for either Whitsett or defendant and it was not in the archives in
Whitsett's laptop, even though there were other emails from that date
located. (Ex. 6, 1076-1077).

1 D. Defendant's Alleged Fraud Against Subsequent Employer
2 Casto Travel in December 2011

3 The evidence shows that after being terminated from Ricoh,
4 defendant continued to commit fraud, this time against his new
5 employer, Casto Travel. In a lengthy civil complaint filed by Casto
6 Travel on January 9, 2013 (a copy of which is attached hereto as
7 Exhibit 7), Casto alleges the following, among many other things:
8 On October 3, 2011, Casto hired defendant as its Vice President of
9 Information. In this role, he was assigned to revamp the Singles
10 Travel Company website by hiring the best and most cost effective
11 web design service to do the job. Defendant represented that he had
12 retained a company called "Social Media Design Group" for the job
13 and on or about December 1, 2011, defendant submitted an \$11,500
14 invoice to Casto to pay Social Media Design Group for the work.
15 Defendant said he would deliver the check to a representative of
16 Social Media Design Group. (Ex. 7, BS 2152-2153).

17 Casto issued a check payable to Social Media Inc.Org, the payee
18 designated by defendant for the purported services -- and the exact
19 account name of defendant's Bank of America business checking
20 account used in the Ricoh fraud, as referenced above. (Ex. 7, BS
21 2153-2154). Unbeknownst to Casto, defendant had created the forged
22 invoice, he was the owner of Social Media Design Group, and he
23 deposited the forged check into his Bank of America account. (Id.)
24 Equally significant, defendant allegedly submitted the forged
25 invoice in December 2011, i.e. the month after his defense attorney
26 spoke with TFA Muyo on November 22, 2011 about the Ricoh criminal
27 investigation and thus, defendant must have known by then that he
28 was being criminally investigated for the Ricoh embezzlement. (Ex.

1 7, BS 2158; Ex. 4, BS 1066). While the Casto allegations are civil,
2 it is also significant that the alleged conduct is similar to the
3 conduct alleged in the Ricoh felony charges (i.e. forged invoices),
4 as well as the federal case (forged PayPal records), and the same
5 bank account was used to deposit the illegal proceeds. Moreover,
6 the Santa Clara District Attorney's Office has advised the
7 government that the search warrant executed at defendant's residence
8 on June 12, 2013 was in connection with a criminal investigation
9 relating to the Casto allegations.

10 **E. State Charges Filed in Connection with Ricoh Fraud**

11 On April 25, 2012, the Santa Clara District Attorney's Office
12 filed a three-count felony criminal complaint charging defendant
13 with grand theft, forgery and using personal identifying information
14 without authorization. (A copy of the felony complaint, obtained
15 from the Santa Clara District Attorney's Office, is attached hereto
16 as Exhibit 8, BS 1078-1079.)⁷

17 On or about March 20, 2013, the Santa Clara District Attorney's
18 Office filed a felony information adding new charges, including
19 Count 15 charging the crime of "preparing false documentary
20 evidence" between June 20, 2012 and October 12, 2012, relating to
21 the creation of the fraudulent Ricoh email submitted to the D.A.
22 Investigator during the course of its criminal investigation. (A
23 copy of the 15-count information is attached hereto as Exhibit 9.)

24
25 ⁷ The Santa Clara District Attorney's Office has advised the
26 government that defendant was not arrested on the criminal complaint
27 until on or about July 17, 2012, so defendant may not have been
28 aware that the complaint had been filed when he sent the fabricated
email. Nevertheless, there is no doubt he was aware of the Santa
Clara criminal investigation being conducted and indeed, he provided
the email to his attorney in connection with that investigation.

III. CONCLUSION

2 The government believes that based on the attached exhibits,
3 the evidence shows that after the federal search warrant was
4 executed at defendant's residence in July 2010, he has committed a
5 pattern of fraud against two employers and the Santa Clara District
6 Attorney's Office. The evidence also shows that some of this fraud
7 was committed while defendant was also aware that he was the subject
8 of a criminal investigation relating to the Ricoh case. Defendant's
9 repeated violations of pretrial release in his federal case as
10 outlined by the violation letter from Pretrial Services, in light of
11 his pattern of fraudulent conduct as described above and his prior
12 criminal history, shows a shocking disregard for the criminal
13 justice system and therefore, the government respectfully requests
14 that defendant's bond be revoked.

15 Dated: July 2, 2013

Respectfully submitted,

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